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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JAN 23 2007

U.I.L. 72-20-04

T:EP:RA:T3

Legend:

LEGEND

Taxpayer A =  
Employer B =  
IRA X =  
Company B =  
Amount C =

Dear :

This is in response to a letter dated January 30, 2006, submitted by your authorized representative in which you request a ruling under section 72(t) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A retired from Company B at 2004 at age 50, and rolled his retirement plan balance into an individual retirement arrangement, IRA X, maintained with Company B. Taxpayer A commenced receiving payments from IRA X in a series of substantially equal periodic payments determined under the fixed amortization method, without recalculation. Taxpayer A's annual payment from IRA X is Amount C.

Taxpayer A would like to increase the annual distribution from IRA X due to a change in his financial circumstances. Taxpayer A will continue to use the fixed

amortization method to determine his annual payments, but proposes to recalculate the amount of the annual payment each year.

Taxpayer A requests a ruling that the proposed annual recalculation of the amount of the annual payment from IRA X will not be considered a modification to a series of substantially equal periodic payments that would result in the imposition of the 10 percent additional tax imposed on premature distributions under Code section 72(t)(1).

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d)(1), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 72 of the Code provides rules for determining how amounts received as annuities, endowments or life insurance contracts and distributions from qualified plans are to be taxed.

Section 72(t)(1) of the Code provides for the imposition of an additional 10 percent tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is included in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) shall not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10 percent tax by section 72(t)(2)(A)(iv) that, if the series of payments is subsequently modified (other than by reason of death or disability) before the later of the employee's attainment of age 59 ½ or before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 ½, then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by an amount determined under regulations, equal to the tax that would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Notice 89-25 was published on March 20, 1989, and provides guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986 (TRA '86). In the absence of regulations on Code section 72(t), this notice provided guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Question and Answer-12 of Notice 89-25 provides three methods of determining substantially equal periodic payments for purposes of Code section 72(t)(2)(A)(iv).

Revenue Ruling 2002-62, 2002-42 I.R.B. 710, which was published on October 21, 2002, modified Q&A-12 of Notice 89-25. Revenue Ruling 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Q&A-12 of Notice 89-25).

Section 2.02(e) of Revenue Ruling 2002-62 provides that under all three methods, substantially equal periodic payments are calculated with respect to an account balance as of the first valuation date selected in section 2.02(d). Thus, a modification to the series of payments will occur, if after that date, there is any addition to the account balance other than gains or losses, (ii) any nontaxable transfer of a portion of the account balance to another retirement plan, or (iii) a rollover by the taxpayer of the amount received resulting in such amount not being taxable.

The fixed amortization method provides that the annual payment for each year is determined each year by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each succeeding year. In other words, once the annual distribution for the first distribution year is determined, the annual payment is the same amount in each succeeding year.

In this case, Taxpayer A states that he began receiving annual payments from IRA X in the amount of Amount C in 2004 in a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code using the fixed amortization method, without recalculation. Taxpayer A's annual payment from IRA X was determined in 2004, the first distribution year, and remains the same in each succeeding year. Taxpayer A proposes to recalculate his annual payments from IRA X at a time which is subsequent to his first distribution year and which could result in an annual payment that is inconsistent Amount C. An interruption in the series of equal periodic payments that results in a distribution that is inconsistent with the chosen methodology is considered a modification to a series of substantially equal periodic payments under Code section 72(t)(4) that would result in the imposition of the 10 percent additional tax imposed on premature distributions under Code section 72(t)(1).

Therefore, with respect to your ruling request, we conclude that the proposed recalculation of the annual payment from IRA X will be considered a modification to a series of substantially equal periodic payments under Code section 72(t)(4)

that will result in the imposition of the 10 percent additional tax for premature distributions under Code section 72(t)(1).

The ruling assumes that IRA X meets the requirements of Code section 408(a) at all times relevant to this transaction.

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments from IRA X, otherwise, satisfies Code section 72(t)(2)(A)(iv) and Revenue Ruling 2002-62.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions regarding this ruling, please contact  
SE:T:EP:RA:T2.

Sincerely yours,

**Joyce E. Floyd**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose Form 437